

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

DISTRICT COURT DEPARTMENT
EAST BROOKFIELD DIVISION

JOSEPH M. LOSAPIO,
Plaintiff,

v.

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY,
Defendant.

C.A. NO.: 0469CV0193

04-40156 FDS

DEFENDANT'S EXPEDITED MOTION FOR TEMPORARY STAY

Defendant Lincoln National Life Insurance Company moves this Honorable Court to issue a temporary stay of the proceedings in State Court in this matter.

As grounds, Defendant states:

1. This matter is the subject of a Motion to Consolidate pending in a related case in the United States District Court for the District of Massachusetts. (A copy of the Motion to Consolidate is attached hereto as Exhibit "A.").

2. On or about June 24, 2004, Mr. Losapio filed the present Complaint against Lincoln National in the District Court Department, East Brookfield Division, Worcester County Massachusetts, Civil Action No. 0469CV0193 (hereinafter "the Lincoln National Complaint.") This Complaint sought to recover residual disability benefit payments that Mr. Losapio claimed were owed him under a policy of insurance issued by Lincoln National and administered by MetLife.

3. A few weeks later, on or about July 14, 2004, Mr. Losapio filed a *second* Complaint in the District Court Department, East Brookfield Division, Worcester County

Massachusetts, Civil Action No. 0469CV0226. This Complaint (hereinafter referred to as “the MetLife Complaint”) was brought against MetLife as Administrator of the same policy identified in the Lincoln National Complaint.

4. On August 17, 2004, MetLife removed the MetLife action to the United States District Court for the District of Massachusetts.

5. Plaintiff’s Complaints against Lincoln National and MetLife both seek to recover under the same policy of insurance. As such, on August 17, 2004, MetLife filed a Motion to Consolidate the State and Federal Court related actions in the Federal Court litigation. A copy of MetLife’s Motion to Consolidate is attached hereto as Exhibit “A.” Plaintiff filed an Opposition to the Motion (attached as Exhibit “B”), after which MetLife filed a Reply Brief (attached as Exhibit “C.”)

6. MetLife’s Motion to Consolidate is still pending before the Federal Court.

7. On September 2, 2004, Plaintiff filed a Motion to Compel Production of Documents in the instant case. Lincoln National filed a timely Opposition. Plaintiff’s counsel has also stated that he intends to file a separate Motion to Compel Lincoln National’s Supplemental Answers to Plaintiff’s Interrogatories.

8. These motions raise issues that will have to be revisited before the Federal Court should MetLife’s Motion to Consolidate be granted.

9. Until the Motion to Consolidate is ruled upon, it is appropriate that the Court and the parties hold off on any further motions and that the hearing on the Motion to Compel be postponed.

10. MetLife has advised the Federal Court of the conflict and has requested an expedited ruling on the Motion to Consolidate this matter in the Federal Court case. (See Exhibit "D.")

Wherefore, Lincoln National requests that the Court issue an Order staying all discovery, motions, and hearings pending a ruling from the Federal Court on MetLife's Motion to Consolidate.

NOTICE OF EXPEDITED HEARING

This matter will be set down for hearing on September 10, 2004 at 10:00.

Defendant,

THE LINCOLN NATIONAL LIFE
INSURANCE COMPANY,

By Its Attorneys,



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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon Counsel of Record on September 7, 2004.



Joseph R. Daigle